APPENDIX.

California Civil Code:

§2228. Trustee's Obligation to Good Faith. In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§2229. Trustee Not to Use Property for His Own Profit. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

§2231. Trustee's Influence Not to Be Used for His Advantage. A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

§2233. To Disclose Adverse Interest. If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

§2234. Trustee Guilty of Fraud, When. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of a trust.

§2235. Presumption Against Trustees. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by

the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

§2236. [Trustee Mingling Trust Property With His Own.] A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance the absolute owner, is liable for its safety in all events, and for the value of its use.

§2237. Measure of Liability for Breach of Trust. A trustee who uses or disposes of the trust property, contrary to section two thousand two hundred and twenty-nine, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds with interest.

The California law which is in agreement with the uniform law on this subject is well stated in Perry on Trusts and Trustees. (Vol. 1, 7th Ed., Par. 433, at p. 721.) The learned author states that UNDER NO CIRCUMSTANCES can a trustee set up a claim to trust property adversely to the *cestui que trust,* and that under no circumstances could a trustee deny the title of the beneficiary.

In *Purdy v. Johnson,* 174 Cal. 521, the California Supreme Court ruled that a trustee cannot use trust property to secure repayment of advances made by him personally, since, such course of procedure, if permitted, would be in violation of his trust duties under the applicable code sections.

In *Saracco Tank Welding Co. v. Platz,* 65 Cal. App. 2d 506, the California Court stated as follows:

"When a corporation becomes insolvent its assets are held in trust for the benefit of the stockholders and creditors. In 15A Fletcher's Cyc. of Corp., perm. ed. (1938), section 7369, at page 59, it is said:

"The theory of the trust fund doctrine is that all of the assets of a corporation, immediately on its becoming insolvent, become a trust fund for the benefit of all of its creditors. * * *"

See also:

Nixon v. Goodwin, 3 Cal. App. 358;

Title Insurance Co. v. Cal. Dev. Co., 171 Cal. 173;

Hanson v. Cheynske, 180 Cal. 275, 285.